

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE CLYDE BURLESON,

Plaintiff,

No. CIV S-00-2591 DFL PAN P

vs.

FELIPE M. SAMSON, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

On January 18, 2002, the death of defendant Dan Duarte was suggested on the record when the United States Marshal returned service unexecuted for said defendant. Pursuant to Federal Rule of Civil Procedure 25, a motion for substitution of a proper party must be made no later than ninety days after the death is suggested upon the record. That time period has now expired, and no motion for substitution has been filed.

Accordingly, IT IS HEREBY RECOMMENDED that defendant Dan Duarte be dismissed from this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days after service of these findings and recommendations, any written objections may be filed with the court. The document should be captioned "Objections to Magistrate Judge's Findings and

1 Recommendations.” Failure to file objections within the specified time may waive the right to
2 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: September 25, 2006.

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6 UNITED STATES MAGISTRATE JUDGE

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